"It seems to be a sort of popular notion of some witnesses that in considering whether customers are likely to be deceived, you are to consider the case of an ignorant customer who knows nothing about, or very little about the subject of the action. That is a great mistake. The kind of customer that the Courts ought to think of in these cases is the customer who knows the distinguishing characteristics of the plaintiff's goods, those characteristics which distinguish his goods from other goods on the market so far as relates to general characteristics. The customer must be one who, knowing what is fairly common to the trade, knows of the plaintiff's goods by reason of these distinguishing characteristics. If he does not know that he is not a customer whose views can properly, or will be, regarded by this Court."

Finally, still on the second issue, I attach "very great importance", as did the Court of Appeal in the *Snelling* case, to the price difference between the two products that there cannot be confusion or deception between them. It is in the Agreed Bundle that the plaintiffs' bottle of Clairol, like P157, is sold for $4.20. The defendant's Backer, however, is sold at a price range which varies from $3.50 to as low as $2.30. In the competitive consumer market today if there is anything that customers would take notice of at all, the one thing that they would notice is the price they have to pay for a product.

What I have said is sufficient to dismiss the action. But there is another claim of the plaintiffs, that of infringement of copyright, the law in which is complicated. In the defence, the defendant put the plaintiffs to prove the copyright and its infringement. In the way the action was fought out, the claim for infringement was a subsidiary one. It is sufficient to say that neither the copyright, and far less, the infringement of it was proved. That claim also fails.

As regards costs, counsel for the plaintiffs submitted that if the plaintiffs fail in this action there should be no order as to costs. In considering the matter, it is relevant to refer to the background of this action. On July 7, 1976, the plaintiffs' solicitors wrote to the defendant alleging passing-off. The defendant, without admission of liability, made some changes (as I see them, they are minor changes (see Exhibit D2)) to the label of Backer and were willing to give an undertaking not to use the label which the plaintiffs complained of. It seems to me therefore that the defendant had at all times acted honestly. But the plaintiffs were not satisfied. They wanted the defendant to indemnify them in respect of all expenses they had incurred up to then which they quantified in the sum of $6,796. The defendant refused to pay. It was then that the plaintiffs commenced this action. The plaintiffs have exerted a monopoly which they never had and cannot have in the get-up of their product. There is no reason why costs should not follow the event. The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; Quek Kai Kok.*

TECK SENG & CO. v. WILLIAM EU KENG YUET

[D.C.A. (Wee Chong Jin C.J.) May 6, 1980]
[Singapore — District Court Appeal No. 3 of 1978]

Practice and Procedure — Notice to quit to deceased tenant — Whether effective — Probate and Administration Act (Cap. 23), s. 37.

Landlord and Tenant — Notice to quit — Death of tenant unknown to owner of premises — Effect of notice to quit addressed to deceased tenant — Probate and Administration Act (Cap. 23), s. 37.

In August 1943 Ng Huat Lye became the tenant of No. 59, Tanjong Pagar Road which was then owned by Eu Tong Sen Ltd. Monthly rents were paid to and rent receipts issued by the landlords to "Teck Seng Kongsi — Ng Huat Lye". Ng Huat Lye died in August 1971 but the present occupiers of the premises, the appellants, continued to pay the monthly rents to the landlords who continued to issue rent receipts to "Teck Seng Kongsi — Ng Huat Lye" because they were unaware that Ng Huat Lye had died. In 1976 the respondent became the owner of the premises and, being unaware that Ng Huat Lye had died, sent a notice to quit addressed to "Mr. Ng Huat Lye, 59 Tanjong Pagar Road, Singapore" determining the tenancy on January 31, 1977. The notice to quit was served at the premises on the occupiers who refused to comply with the notice to quit.

The respondent commenced proceedings against the appellants for possession.

The court below gave judgment against the appellants who appealed.

Held, dismissing the appeal: where the person in occupation continues to pay the rent to the landlord after the death intestate of the tenant he can only lawfully do so as agent of the Chief Justice in whom the estate of the deceased tenant was vested by operation of law and a notice to quit served on an agent is a notice to the principal.

Case referred to:-

(1) *Lai Seng Fook* v. *Tang Kong Low* [1978] 1 M.L.J. 158

DISTRICT COURT APPEAL.

G. Murugaiyan for the appellants.

Kirpal Singh for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: In August 1943 Ng Huat Lye became the tenant of No. 59, Tanjong Pagar Road, which was then owned by Eu Tong Sen Ltd., at the monthly rent of $30. A deposit of $30 was paid and a receipt dated August 12, 1943 was issued by the landlords to "Teck Seng Kongsi — Ng Huat Lye." Thereafter the monthly rents were paid to and rent receipts issued by the landlords to "Teck Seng Kongsi — Ng Huat Lye."

Ng Huat Lye died in August 1971 but the present occupiers of the premises, the appellants, continued to pay the monthly rents to the landlords who continued to issue rent receipts to "Teck Seng Kongsi — Ng Huat Lye" because they were unaware that Ng Huat Lye had died. In 1976 the respondent became the owner of the premises and, being unaware that Ng Huat Lye had died, sent through his solicitors in December 1976 a notice to quit which was addressed to "Mr. Ng Huat Lye, 59 Tanjong Pagar Road, Singapore" determining the tenancy on January 31, 1977. The notice to quit was served at the premises on the occupiers who refused to comply with the notice to quit.

The respondent commenced proceedings in the District Court against the appellants for possession of the premises on the ground that the appellants were in unlawful possession. The District Judge gave judgment against the appellants who now appeal.

The only ground of appeal relied on by the appellants at the hearing of the appeal is that the notice to quit had not effectively determined the tenancy of Ng Huat Lye which on his death intestate had become vested in the Chief Justice by virtue of section 37 of the Probate and Administration Act (Cap. 23). This contention was raised before the Court of Appeal in *Lai Seng Fook* v. *Tang Kong Low*[1] where the court decided that where the person in occupation continues to pay the rent to the landlord after the death intestate of the tenant he can only lawfully do so as agent of the Chief Justice in whom the estate of the deceased tenant was vested by operation of law and that a notice to quit served on an agent is a notice to the principal.

I am bound by this decision and the appeal must therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *G. Murugaiyan; Kirpal Singh & Co.*

TAN BOON CHEE, DAVID v. MEDICAL COUNCIL OF SINGAPORE

[O.C.J. (Choor Singh J.) May 15, 1980]

[Singapore — Originating Motion No. 50 of 1978]

Medical Profession — Inquiry — Charges of infamous conduct — Not all members of Medical Council who were present at the start of inquiry were present throughout the hearing — Medical Registration Act (Cap. 218), ss. 23 & 24.

Administrative Law — Inquiry by Medical Council — Improper exercise of statutory jurisdiction — Charge of infamous conduct — Breach of natural justice — Medical Registration Act (Cap. 218), ss. 23 & 24.

This was an appeal against a finding of the Medical Council of Singapore that the appellant, a registered medical practitioner, was guilty of infamous conduct in a professional respect. The appellant was given notice of six charges of infamous conduct in that he was alleged to have prescribed and supplied the drug "Rohypnol" to named patients in such "irregular and excessive quantities" that it constituted infamous conduct in a professional respect. The appellant appeared before the Medical Council at a hearing of the charges held pursuant to the provisions of section 23 of the Act. He was represented by counsel, and witnesses were called by both sides. The inquiry was held over two days and at the conclusion the Medical Council made an Order that the appellant be suspended from Medical Practice for nine months. The record of the enquiry showed that not all members of the Medical Council who were present at the start of the inquiry were present throughout the hearing. Some who were present on the first day were absent on the second day. Some who were present on the second day did not attend the hearing on the first day of the inquiry. Furthermore, on both days, members of the Council were walking in and out of the inquiry as and when they liked while evidence of witnesses was being recorded.

Held, allowing the appeal: (1) the appellant did not get a fair and proper hearing in this case. The manner in which the inquiry was conducted resulted in substantial prejudice to the appellant. It was a clear breach of natural justice for a member of the Medical Council to participate in a decision of the Council when he had not heard all the oral evidence and the submissions made. This breach was so fundamental that it could not be waived;

(2) there was clearly no "due inquiry" in this case within the meaning of section 23(1) of the Medical Registration Act.

Cases referred to:-

(1) *R.* v. *Sussex Justices, ex parte McCarthy* [1924] 1 K.B. 256.

(2) *Wakefield Local Board of Health* (1865-66) 1 Q.B. 84.

(3) *Chop Wong Soong Co.* v. *Khoo Hean Kee* [1964] M.L.J. 410.

(4) *Munday* v. *Munday* [1954] 2 All E.R. 667.

(5) *Fulker* v. *Fulker* [1936] 3 All E.R. 636.

(6) *Mayes* v. *Mayes* [1971] 1 W.L.R. 679 @ 684.

ORIGINATING MOTION.

Singa Retnam (*Seah Sheng Yong* with him) for the appellant.

Sachi Saurajen for the Medical Council.

Cur. Adv. Vult.

Choor Singh J.: This appeal involves a question of importance as to the proper exercise of the statutory jurisdiction conferred on the Medical Council of Singapore to remove from the medical register a practitioner who is alleged to have been guilty of infamous conduct in a professional respect. Parliament has conferred on the Medical Council responsibility for the register and has constituted the Council a domestic forum to determine whether a case is made out for striking off the list a particular name.

It is convenient at this point to set out the terms of section 23(1) of the Medical Registration Act on which the whole question turns. It runs as follows:

"23 (1) If any person registered, whether provisionally or otherwise, under this Act is convicted of any heinous offence or, after due inquiry by the Medical Council, is deemed by the Council to have been guilty of infamous conduct in any professional respect, the Medical Council may order the name of that person to be removed from the register."

The appellant who is a registered medical practitioner was given notice of six charges of infamous conduct in a professional respect. In all six charges it was alleged that the appellant had prescribed and supplied the drug "Rohypnol" to named patients in such "irregular and excessive quantities" that it constituted infamous conduct in a professional respect. The appellant appeared before the Medical Council at a hearing of the charges held pursuant to the provisions of section 23 of the Act. The appellant was represented by counsel. Witnesses were called by both sides. The Inquiry was held over two days. At the conclusion of the Inquiry, the Medical Council made an Order that the appellant be suspended from medical practice for nine months. The appellant now appeals to this court against the said Order.

A large number of grounds are relied upon for asking this court to set aside the Order made by the Medical Council suspending the appellant from medical practice. I consider it unnecessary to consider them or to deal with the merits of this case because on reading the record of this case I noticed something which has shocked my sense of justice and is so glaring a breach of natural justice that the Order made by the Medical Council cannot be allowed to stand. I express no opinion on the guilt or innocence of the appellant on the charges that were brought against